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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY	
10/049,747		01/31/2002		ATTORNEY DOCKET NO.	CONFIRMATION NO.
•		01/31/2002	Ernst Rudolf F. Gesing	Mo6920/LeA 33,917	5998
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BAYER CI	ROPSCIE	ENCE LP			
100 BAYER ROAD PITTSBURGH, PA 15205				EXAMIT	NER
			_	FORD, JOHN M	
				ART UNIT	PAPER NUMBER
				1624	
				DATE MAILED: 04/28/2003	$\mathscr{D}$
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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No. Applicant(s)			
Office Action Summary	10/049747		esing.	<u>eDal</u>
Carrinary	Examiner	-0	Group Art Unit	
-Th MAILING DATE of this communication access	1011117	na	1624	
-Th MAILING DATE of this communication appeal Period for Reply	s on the cover sheet b	eneath the c	orrespondence ad	ldress-
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET 1 OF THIS COMMUNICATION.		- (		
<ul> <li>Extensions of time may be available under the provisions of 37 CFF from the mailing date of this communication.</li> <li>If the period for reply specified above is less than thirty (30) days, a left NO period for reply is specified above, such period shall, by default Failure to reply within the set or extended period for reply will, by stated and the period for reply within the set or extended period for reply will, by stated and the period for reply will, by stated and the period for reply within the set or extended period for reply will, by stated and period for reply will, by stated and period for reply within the set or extended period for reply will, by stated and period for reply within the set or extended period for reply will, by stated and period for reply will be set or extended period for reply will, by stated for reply will be set or extended period for reply will</li></ul>	reply within the statutory min it, expire SIX (6) MONTHS fro	imum of thirty ( om the mailing o	30) days will be consid late of this communica	lered timely. ation.
Status	·			
☐ Responsive to communication(s) filed on				
☐ This action is <b>FINAL.</b>				<del></del> ·
<ul> <li>Since this application is in condition for allowance except accordance with the practice under Ex parte Quayle, 193.</li> </ul>	for formal matters, pros	secution as t	o the merits is clo	osed in
Disposition of Claims				
De Claim(s) / Dand	9	:- (-		
Of the above claim(s)		is/are p	ending in the appli	cation.
□ Claim(s)		is/are w	rithdrawn from cons	sideration.
☐ Claim(s)	~	Is/are a	llowed.	
☐ Claim(s)				
(Claim(s) 17 and 9				
Application Papers		requiren	nent	election
☐ The proposed drawing correction, filed on	is 🗆 approved 🗆	disapprove	d.	
<ul> <li>☐ The drawing(s) filed on is/are object</li> <li>☐ The specification is objected to by the Examiner.</li> </ul>	ed to by the Examiner			
☐ The oath or declaration is objected to by the Examiner.				
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Pri rity under 35 U.S.C. § 119 (a)-(d)				
Acknowledgement is made of a claim for foreign priority ur     All □ Some* □ None of the:	nder 35 U.S.C. § 119 (a)⊣	(d).		
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<ul> <li>□ Certified copies of the priority documents have been red</li> <li>♠ Copies of the certified copies of the priority documents in this national stage application from the International *Certified copies not received:</li> <li>△ Attachment(s)</li> <li>□ Information Disclosure Statement(s), PTO-1449, Paper No(s)</li> </ul>	ceived in Application No. have been received Bureau (PCT Rule 17.2(a)	rview Summa	ary, PTO-413	•
☐ Certified copies of the priority documents have been red  ☐ Copies of the certified copies of the priority documents in this national stage application from the International  *Certified copies not received:	ceived in Application No. have been received Bureau (PCT Rule 17.2(a)	erview Summa		

U.S. Patent and Trademark Office PTO-326 (Rev. 11/00)

Part of Paper No.

Application/Control Number: 10/049,747

Art Unit: 1624

The claims in the application, as a result of the preliminary amendment of January 31, 2002, are claims 1--7 and 9.

This application has been found to contain more than one invention. Therefore, restriction to one of the following distinct inventions is required:

Group I, the instance in claims 1--5 where A is N, the triazines in class 544- subs 180 (+) depending on substitution,

Group II, the instances in claims 1--5 where A is -CH, the pyrimidines in class 544- subs. 310+.

These distinct inventions have acquired separate status in the art, will support separate patents, and will require different fields of search for the respective inventions. Accordingly, restriction for examination purposes, as indicated, is considered proper; 37 CFR 1.145.

This is a 371 application.

Please insert on page 1 of the specification, after the title: This is a 371 of PCT/EP00/07096, filed July 25, 2000.

Restriction in 371 application is controlled by 37 CFR 1.475 and PCT Rule 13.2.

These provide for one compound invention (here we have two), plus <u>one</u> process of making the elected compound invention, plus <u>one</u> method using the elected compound invention.

Claim 1 constitutes an improper joinder of inventions as it groups together compound inventions that are distinct and separately classified, and will support separate patents. Ex parte Markush, 1925 C.D. 126, provided for this claim structure where there was an emergency

engendered need, as the substances were "so closely related that they would not support a series of patents". This is not the case here. Therefore, the instant generic claims constitute an improper joinder of inventions; Ex parte Reid, 105 U.S.P.Q. 251; In re Winnek, 73 U.S.P.Q. 225; In re Ruzicka, 66 U.S.P.Q. 226.

A reference to a triazine would not be a reference to a pyrimidine, and vice versa. These are independent and distinct compound inventions, that will support separate patents.

The Examiner is not given the time to search more than one compound invention per application.

Applicants would not acquiesce in the rejection of one set of compounds, as Grouped, over the other.

Claims 7 and 9 are considered the one method of use, and will be examined with which ever compound invention elected, to the extent they read on the elected subject matter.

Claim 6 was not included in the above, and is it's own Group III, as it is not limited to one invention. Claim 6 is directed to at least 4 processes. If applicants wish to have a process of making examined with the compound invention, it should be presented at the end of prosecution and limited to one process of making the elected compounds, only, as the process will only be rejoined if it is of the same scope as the final version of the compound claim to be allowed.

This application has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is, therefore, requested in promptly correcting any errors of which they may become aware in the specification.

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Applicants' response must include a provisional election, even if the requirement be traversed, see 37 CFR 1.499.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

John M. Ford:jmr

April 24, 2003

JOHN M. FORD PRIMARY EXAMINER

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